

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARYLIN GONZALEZ,

Plaintiff,

-against-

DOLLAR TREE STORES, INC.,

Defendant.

Civil Action No. 20-cv-_____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§1332(a), 1441(b), and 1446, defendant Dollar Tree Stores, Inc. (“Dollar Tree” or “Defendant”) removes this civil action from the Bronx County Supreme Court in New York because Plaintiff and Defendant are diverse and the amount in controversy exceeds the jurisdictional minimum. As a short and plain statement of the grounds for removal, Defendant states the following:

PLAINTIFF’S CLAIMS

1. Plaintiff commenced this action in the Bronx County Supreme Court on June 2, 2020 by filing a Summons and Complaint, a copy of which is attached as Exhibit A.
2. Plaintiff alleges that she was damaged due to Dollar Tree’s alleged negligence causing Plaintiff to sustain personal injuries. *See* Complaint at ¶¶ 13-24.
3. Plaintiff’s Complaint did not contain a sum certain of her damages. Rather she alleged that her damages exceeded the jurisdictional limits of any other court. *Id.* at p. 6.
4. Dollar Tree filed its Answer on July 24, 2020, a copy of which is annexed hereto as Exhibit B.

5. After filing its answer and serving its demands, on October 12, 2020 Plaintiff's counsel emailed Dollar Tree's counsel, advising of Plaintiff's injuries and providing a settlement demand. *See* Exhibit C. Specifically, the email stated that Plaintiff sustained a tear within the posterior horn of both the medial and lateral menisci grade 2 and partial tearing of the Anterior Cruciate Ligament. She made a settlement demand of \$175,000.00. *Id.*

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)

6. This Court has diversity jurisdiction over this action under 28 U.S.C. §1332(a), which provides, in relevant part: "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States"

CITIZENSHIP

7. According to the allegations in its Complaint, Plaintiff is a resident of the County of Bronx City and State of New York. *See* Exhibit A at ¶ 1.

8. Dollar Tree Stores, Inc. is a Virginia corporation with a principal place of business in Virginia. *See* Dollar Tree's registration details with the Commonwealth of Virginia's State Corporation Commission and with the New York State Secretary of State, which are attached as Exhibit D. Therefore Dollar Tree is a citizen of Virginia pursuant to 28 U.S.C. § 1332(c)(1).

9. Plaintiff and defendant are completely diverse.

AMOUNT IN CONTROVERSY

10. A notice of removal "may assert the amount in controversy if the initial pleading seeks . . . a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and . . . the district court

finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).” 28 U.S.C. § 1446(c)(2)(A) and (B).

11. Pursuant to 28 U.S.C. § 1446(b)(3), a defendant may remove an action within 30 days after receipt of “a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”

12. Plaintiff’s counsel’s October 12, 2020 email stating the extent of Plaintiff’s injuries and demanding \$175,000.00 was the first paper upon which Dollar Tree had notice that it could remove the case to Federal Court.

13. Dollar Tree now timely removes based upon Plaintiff’s demand which exceeds \$75,000.00.

ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

14. Plaintiff and Defendant are diverse and the amount in controversy exceeds \$75,000.00.

15. The United States District Court for the Southern District of New York is the proper venue for removal of this action because it is the district in which the state court action is pending. *See* 28 U.S.C. §§ 1441(a) and 1446(a).

16. Pursuant to 28 U.S.C. § 1446(a) a true and correct copy of all of the process, pleadings, and orders from the state court action which have been served upon Dollar Tree are being filed with this Notice of Removal.

CONCLUSION

17. By this Notice of Removal, Dollar Tree does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to this action. Dollar Tree intends no admission of fact, law, or liability by this Notice of Removal, and

expressly reserves all defenses, motions and/or pleas.

Dated: November 3, 2020
New York, New York

Respectfully submitted,

/s/ Gary N. Smith

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